

### Don't forget the PPF levy (as if you could) ...

The economic crisis could result in marked changes in the "Failure Scores" attributed to schemes' sponsoring employers and/or the assumed probability of insolvency attached to each score. Even sponsors with a history of low probabilities of insolvency could be deemed to have become significantly riskier, with a resultant knock-on increase in their levy for 2010/11.

**ACTION:** Trustees should be encouraging sponsoring employers urgently to take whatever actions will improve the sponsor's D&B Failure Score as at 31 March 2009, which the PPF intends to use as the base-point for its 2010/11 levy assessment.

### Regulator publishes draft Code of Practice for its extended anti-avoidance powers

The Pensions Regulator issued a draft Code of Practice for consultation on 15 December 2008 until 6 February 2009.

The Code details the circumstances in which the Regulator would expect to issue a contribution notice under the new material detriment test. These include:

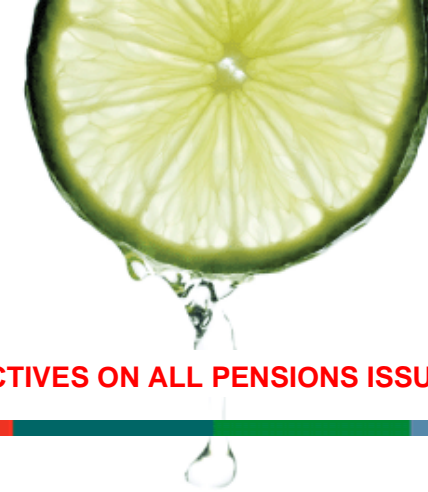
- the transfer out of the jurisdictions of the United Kingdom of the scheme or (in certain circumstances) of the sponsoring employer
- the severing or significant reduction of employer support for the scheme
- the transfer of liabilities to another scheme or arrangement with insufficient employer support or funding or
- operating the scheme so as to create a financial benefit for the employer or some other, with insufficient regard for the interests of the members.

The DWP also intends to phase in an extension of the period in which the Regulator can exercise the power to issue a financial support direction from 12 months to 24 months. It issued draft regulations for consultation on 15 December 2008.

**ACTION:** Employers (in particular) should familiarise themselves with the (draft) Code if they are thinking about any of the types of restructuring covered by it.

### MNT requirements to be clarified

Draft amending regulations, which are due to come into effect on 6 April 2009, will clarify that independent trustee companies performing a professional function are not required to appoint member-nominated directors where they sit as a scheme's trustee alongside a general trustee company (one where the directors perform a similar role to lay trustees).



### Regulator publishes scheme funding summary

The Pensions Regulator published its latest scheme funding summary, based on its analysis of recovery plans and clearance applications, on 11 December 2008. Unsurprisingly, the summary shows a general improvement in funding levels between 2005 and 2007, but this is before the credit crunch started to bite.

We are now approaching the second round of scheme-specific funding valuations. Our impression is trustees won the first round on points, supported by legislative pressure for prudence and greater trustee knowledge and understanding.

An important factor in many cases was employers did not obtain independent advice (effectively yielding the initiative to the trustees who are the primary focus of the scheme actuary's advice).

Recent financial turmoil means the second round will be tougher and pensions more critical, possibly being the knock-out blow for some employers.

In such circumstances employers are taking a serious risk if they get into the ring without a good team of seconds (both actuarial and legal) in their corner.

**ACTION:** Employers should ensure they have access to independent advice if they are to avoid having one hand tied behind their backs when facing the trustees.

### Notifiable events to be simplified

The DWP issued draft regulations for consultation on 15 December 2008, aimed partly at simplifying the "notifiable events" framework (see our *In Focus*) by removing the requirement to notify the Regulator about:

- two or more changes in the holders of any key scheme post within the previous 12 months
- any change in the employer's credit rating, or the employer ceasing to have a credit rating and

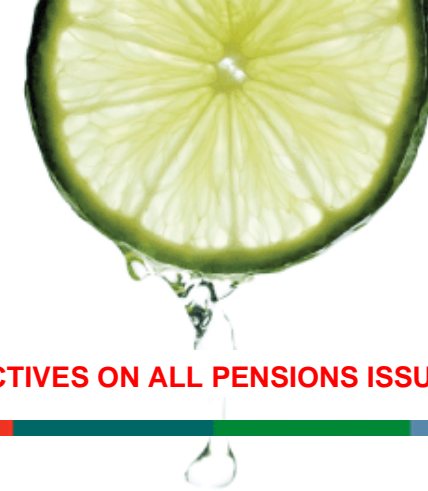
- two or more changes in the holders of any key employer posts within the previous 12 months.

### Statutory money purchase illustrations (SMPIs) to be revised

Following a fast-track consultation, the Board for Actuarial Standards (BAS) published version 1.3 of *Technical Memorandum 1: Statutory Money Purchase Illustrations* (TM1) on 21 January 2009 to reflect recent changes in legislation.

The amendments will mean that, from no later than 1 September 2009, SMPIs will reflect the forthcoming abolition of money purchase contracting out and the changed method of calculating contracting-out rebates of National Insurance Contributions.

BAS will be carrying out a wider ranging review of TM1 over the coming year.



### Commutation of trivial pensions

Draft (DWP) amending regulations will extend the circumstances in which occupational pensions can be commuted on the grounds of triviality in line with draft HMRC regulations.

Both sets of regulations are due to come into effect on 6 April 2009.

The new circumstances in which pensions can be commuted into an authorised lump sum payment are:

- the member is between the ages of 60 and 74, inclusive
- he is not (or connected to) a controlling director of a sponsoring employer of that or any related scheme
- every other related scheme (if any) makes a payment to the member
- the total payments made by all related schemes does not exceed £2,000
- all the payments are made within a period that does not exceed one month

- the payments extinguish the member's entitlement to benefits under all the related schemes and
- no transfer payments have been made in respect of the member during the preceding 3 years.

Authorised lumps sums can also be made in certain other new situations.

**ACTION:** Trustees may wish to ask their scheme's administrator how many pensions it will be possible to commute on such grounds and what administrative cost savings would be achieved. If they decide to proceed, they should then discuss the commutation terms with their Scheme Actuary.

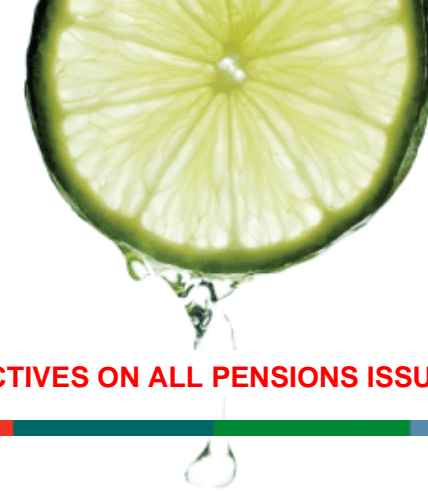
### Regulator to get power to penalise employers who fail to consult over scheme changes

Since 6 April 2006, employers have been required to consult before making certain changes to future benefit accrual or DC contributions payable under an occupational pension scheme or changing the contributions payable to personal pension schemes. The threshold for consultation started at 150 employees, but was reduced to 100 from 6 April 2007 and to 50 from 6 April 2008.

Draft amending regulations, which are due to come into effect on 6 April 2009, will give the Pensions Regulator the power to impose civil penalties on employers who fail to comply without reasonable excuse.

The Regulator issued a reminder to employers on 19 December 2008.

**ACTION:** Employers should factor in the consultation requirements when planning any benefit changes.



### DWP publishes deregulatory review update

The Pensions Act 2008 already paves the way for:

- the reduction in the cap on the revaluation of early leavers' deferred pensions (from 5% pa to 2.5% pa)
- the abolition of "safeguarded rights" (ie contracted-out rights created under a pension sharing order on divorce)
- the abolition of all protected rights (ie DC contracted-out rights) to remove the specific restrictions on how such benefits are taken.

A Commencement Order made on 21 January 2009 confirms that the provisions relating to the first two points come into effect from 6 April 2009.

Protected rights, however, are not due to be abolished until DC contracting-out is abolished (expected to be sometime between 2012 and 2015).

The Government had also intended to try out a system of principles-based regulation by replacing the existing disclosure regulations. However, the DWP's Simplification Plan 2008-09, issued on 11 December 2008, indicates that a Working Group has concluded such an approach would not be appropriate and some degree of prescription would still be required.

On a positive note, the DWP is consulting on draft regulations that include new statutory overrides, which are due to come into force from 6 April 2008. These will allow employers to take advantage of the reduction in the cap on early leaver revaluations (see above) and the similar change that was made to Limited Price Indexation with effect from 6 April 2005 where the scheme's rules would otherwise prohibited change.

### Personal Accounts update

Personal Accounts are scheduled to be introduced in 2012.

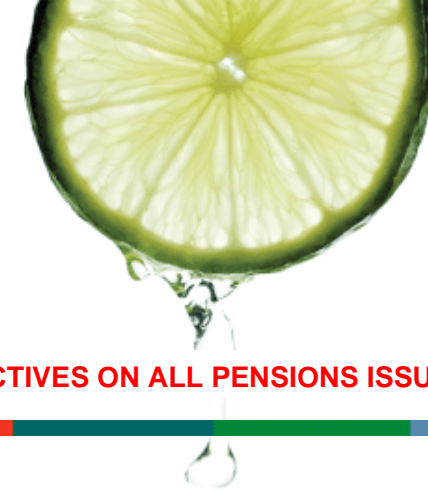
The Personal Accounts Delivery Authority (PADA) says its working assumption is that the onset of employer duties [and, hence, Personal Accounts] will be in October 2012.

Draft regulations detailing employers' obligations (eg as regards automatic enrolment) and the process for certifying that alternative contribution structures satisfy the exemption requirements are expected during the first quarter of 2009.

**ACTION:** Employers should start thinking about the impact the introduction of Personal Accounts will have on them and the design of their pension arrangements.

PADA is already planning how to pay benefits, publishing a consultation paper "Securing a retirement income" on 2 December 2008; the consultation runs until 4 March 2009.

The Personal Accounts scheme will not provide annuities for members. Instead, PADA is proposing the scheme will design a largely self-service process to help members decide which retirement product will suit their specific needs.



### DWP publishes response to flexible retirement consultation

The DWP published on 16 December 2008 its response to a consultation it had launched in October 2007 regarding the uncertainties around flexible retirement and employees working beyond their normal retirement ages.

The DWP's response includes two alternative sets of regulations on which it wishes to consult until 10 March 2009:

- The first option would add a wide statutory exemption, for all pensions rules and practices linked to flexible retirement arrangements, to those listed at Schedule 2 to the Age Regulations.
- The second, more limited option, would allow occupational pension schemes not to provide death-in-service benefits in respect of members in flexible retirement arrangements.

### DWP publishes response to risk sharing consultation

The DWP issued a consultation paper in June 2008. The paper looked at two different risk-sharing approaches:

- Conditional indexation schemes – DB schemes with pension increases dependent on the funding level.
- Collective defined contribution schemes – schemes that are DC from the employer's perspective, but with a DB target and pooling across members to share out certain risks.

The DWP issued its consultation response on 11 December 2008 and indicated it will be carrying out further work to explore the concept of Collective DC, but not Conditional Indexation. (See our press release for our views on this.)

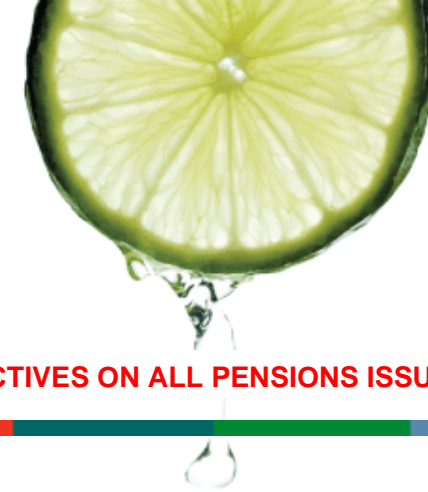
### Regulator publishes record-keeping guidance

The Pensions Regulator published guidance on record-keeping on 9 January 2009, following a consultation exercise.

The guidance helps those responsible for record-keeping and administration (including trustees) to put in place good practices for measuring the presence of member data. It also gives advice on assessing the risks of incomplete or inaccurate data, with aim of improving the standard of record-keeping across the industry.

The guidance details the Regulator's approach to the testing and measurement of member record data.

**ACTION:** Trustees should familiarise themselves with the guidance and ask their administrators how the scheme's data is tested for completeness and accuracy.



### IASB issues update on IAS19 changes

The IASB's January 2009 Update indicates that the Board has tentatively decided to work towards two exposure drafts amending IAS19. The first will deal, amongst other things, with the recognition and presentation of changes in the defined benefit obligation and plan assets. The second will deal with contribution-based promises (see our *News* of 28 March 2008 for an explanation of these).

For the first of the exposure drafts, the Board has tentatively decided entities should:

- disaggregate changes in the defined benefit obligation and in plan assets into employment, financing and remeasurement components, and recognise the components in the income statement

- disclose the employment and financing components either in the income statement or in the notes, and present the remeasurement component in the income statement.

For further information please get in touch with your usual HamishWilson consultant or contact us on 0870 160 5700 or [enquiries@hamishwilson.com](mailto:enquiries@hamishwilson.com).

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